

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DENNIS TIMMONS,

Petitioner,

v.

ORDER
06-CV-386S

DALE ARTUS,

Respondent.

1. On June 14, 2006, Petitioner commenced this action seeking federal habeas relief under 28 U.S.C. § 2254.

2. On July 14, 2006, this Court referred this matter to the Honorable Leslie G. Foschio, United States Magistrate Judge, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a Report and Recommendation containing findings of fact, conclusions of law and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In an Amended Report and Recommendation filed on October 1, 2009, Judge Foschio recommended that Petitioner's Petition for a Writ of Habeas Corpus be dismissed as untimely filed. On October 22, 2009, Petitioner filed timely Objections to Judge Foschio's Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

4. This Court has thoroughly reviewed Judge Foschio's Report and Recommendation, Petitioner's Objections thereto and the applicable law. Upon due consideration, this Court finds no legal or factual error in Judge Foschio's Report and Recommendation. Accordingly, Petitioner's Objections are denied and this Court will accept the Report and Recommendation in its entirety.

IT HEREBY IS ORDERED, that this Court accepts Judge Foschio's October 1, 2009 Report and Recommendation (Docket No. 28) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's Objections (Docket No. 29) are DENIED.

FURTHER, that Petitioner's petition seeking federal habeas relief (Docket No. 1) is DISMISSED as untimely for the reasons set forth in the Amended Report and Recommendation.

FURTHER, that because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: December 16, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge